

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARTHUR STANTON, on behalf of himself
and others similarly situated,

Plaintiff,

v.

THE NCR PENSION PLAN; THE
PENSION AND BENEFIT COMMITTEE
OF THE NCR PENSION PLAN; NCR, as
Plan Administrator; and ANDREA
LEDFORD, LINDA FAYNE LEVINSON,
EDWARD P. BOYKIN, GARY J.
DAICHENDT, CHINH E. CHU, and
RICHARD T. MCGUIRE

Defendants.

CIVIL ACTION NO. 1:17-cv-2309

CLASS ACTION COMPLAINT

DEFENDANTS' MOTION TO DISMISS
PURSUANT TO RULE 12(B)(1) AND 12(B)(6)

Defendants move to dismiss all of Plaintiff's claims filed in the instant lawsuit ("Lawsuit") pursuant to Fed. R. Civ. P. 8(a), 12(b)(1) and 12(b)(6). Plaintiff claims he is a "vested participant" in NCR's pension plan and that Defendants denied him retirement benefits and notices in violation of the Employee Retirement Income Security Act of 1974 ("ERISA").

NCR employed Plaintiff from 1961 through 1969, before Plaintiff quit and began working for another employer, Lockheed Martin. Plaintiff was rehired by NCR in late 1971, and worked until his termination in 1979. During that time and

for many years after, NCR maintained The Retirement Plan for Employees of the National Cash Register Company (“the Plan”), a pension plan in which Plaintiff did not participate.

As discussed more fully in Defendants’ concurrently-filed Memorandum In Support, Plaintiff’s untimely lawsuit (“Lawsuit”) must be dismissed for many reasons:

- (1) It is barred by the applicable statute of limitations.
- (2) Alternatively, the Court has no subject matter jurisdiction over this Lawsuit because ERISA does not apply to any cause of action that arose, or any act or omission that occurred, before January 1, 1975.
- (3) Plaintiff has no standing to bring the Lawsuit because NCR did not continuously employ him for ten or more years.
- (4) Plaintiff’s assertion that he was on an “approved leave of absence” while he was at Lockheed Martin is based on an oral promise, and oral representations cannot alter the terms of ERISA-governed plans.
- (5) Count III must be dismissed because Plaintiff timely received the documentation he requested in March 2017.
- (6) Plaintiff’s Count II and IV breach of fiduciary duty claims are not cognizable as claims separate from Plaintiff’s Count I claim for benefits under the Plan.
- (7) Except for The Pension and Benefits Committee, the remaining Defendants are not proper parties to the Lawsuit.
- (8) Because Plaintiff does not adequately plead a claim for breach of fiduciary duty, his Count II and IV breach of fiduciary duty claims must be dismissed.

Pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), each of Plaintiff's claims must be dismissed. This motion is based upon the concurrently-filed memorandum in support and all exhibits thereto, all pleadings and records on file in this action, and upon such other and further evidence and argument as may be presented at or before any hearing on this matter.

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), the undersigned counsel for Defendant certifies that the pleading has been prepared in Times New Roman, 14-point type, which is one of the font and point selections approved by the Court in Local Rule 5.1(B).

Respectfully submitted this 15th day of September, 2017.

/s/ Jeffrey D. Mokotoff

FORD & HARRISON LLP
271 17th Street, NW, Suite 1900
Atlanta, GA 30363
Telephone: (404) 888-3800
Facsimile: (404) 888-3863

Jeffrey D. Mokotoff
Georgia Bar No. 515472
jmokotoff@fordharrison.com

Tiffany Downs
Georgia Bar No.
tdowns@fordharrison.com

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 15, 2017, he electronically filed the foregoing with the Clerk of Court using the CM/ECF System which will automatically send e-mail notification of such filing to the attorneys of record.

FORD & HARRISON LLP
271 17th Street, NW, Suite 1900
Atlanta, GA 30363
Telephone: (404) 888-3800
Facsimile: (404) 888-3863

/s/ Jeffrey D. Mokotoff

Jeffrey D. Mokotoff
Georgia Bar No. 515472
jmokotoff@fordharrison.com

Attorney for Defendants